

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE APPLICATION
SEEKING APPROVAL OF OHIO POWER
COMPANY'S PROPOSAL TO ENTER INTO
AN AFFILIATE POWER PURCHASE
AGREEMENT FOR INCLUSION IN THE
POWER PURCHASE AGREEMENT RIDER.**

CASE NO. 14-1693-EL-RDR

**IN THE MATTER OF THE APPLICATION OF
OHIO POWER COMPANY FOR APPROVAL
OF CERTAIN ACCOUNTING AUTHORITY.**

CASE NO. 14-1694-EL-AAM

FINDING AND ORDER

Entered in the Journal on April 4, 2018

I. SUMMARY

{¶ 1} The Commission approves the proposed Power Purchase Agreement Rider tariffs filed by Ohio Power Company d/b/a AEP Ohio on February 28, 2018.

II. DISCUSSION

{¶ 2} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company) is an electric distribution utility as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an electric distribution utility shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} In Case No. 13-2385-EL-SSO, et al., the Commission modified and approved AEP Ohio's application for an ESP for the period beginning June 1, 2015, through May 31,

2018, pursuant to R.C. 4928.143. *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al. (*ESP 3 Case*), Opinion and Order (Feb. 25, 2015), Second Entry on Rehearing (May 28, 2015), Fourth Entry on Rehearing (Nov. 3, 2016), Seventh Entry on Rehearing (Apr. 5, 2017). Among other matters, the Commission authorized AEP Ohio to establish a placeholder Power Purchase Agreement (PPA) Rider and required the Company to justify any future request for cost recovery in a separate proceeding. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 20-22, 25-26.

{¶ 5} Subsequently, in the above-captioned proceedings, the Commission modified and approved a stipulation and recommendation pertaining to AEP Ohio's proposal to populate the placeholder PPA Rider approved in the *ESP 3 Case*. *In re Ohio Power Co.*, Case No. 14-1693-EL-RDR, et al. (*PPA Rider Case*), Opinion and Order (Mar. 31, 2016), Second Entry on Rehearing (Nov. 3, 2016), Fifth Entry on Rehearing (Apr. 5, 2017). With respect to AEP Ohio's quarterly PPA Rider filings, the Commission directed that, if Staff raises no issues prior to the billing cycle during which the quarterly adjustments are to become effective, the adjusted PPA Rider rates shall become effective for that billing cycle. The Commission also noted that the PPA Rider remains subject to adjustment during the annual audit and reconciliation. *PPA Rider Case*, Opinion and Order (Mar. 31, 2016) at 89-90.

{¶ 6} On February 28, 2018, AEP Ohio filed an application to update the PPA Rider, effective with the first billing cycle of April 2018. With its application, AEP Ohio filed proposed PPA Rider tariffs. In addition to the quarterly adjustment of the PPA Rider rates, AEP Ohio proposes to modify the PPA Rider tariffs to provide that the rider "is subject to reconciliation, including, but not limited to, refunds to customers, based upon the results of audits ordered by the Commission in accordance with the February 25, 2015 Opinion and Order in Case Nos. 13-2385-EL-SSO, et al. and the March 31, 2016 Opinion and Order in Case No. 14-1693-EL-RDR."

{¶ 7} On March 12, 2018, Staff filed its review and recommendations. Following its review, Staff concludes that the proposed tariffs appropriately clarify the Commission's authority with respect to reconciliations and adjustments to the PPA Rider. Staff, therefore, recommends that the new tariff language be approved, effective with the first billing cycle of April 2018.

{¶ 8} On March 16, 2018, the Ohio Consumers' Counsel (OCC) filed objections to Staff's review and recommendations. Citing a recent decision of the Ohio Supreme Court, OCC asserts that AEP Ohio's proposed PPA Rider tariff modifications, as accepted by Staff, threaten consumers with the prospect of paying unreasonable and unlawful charges. *In re Rev. of Alternative Energy Rider Contained in Tariffs of Ohio Edison Co.*, Slip Opinion No. 2018-Ohio-229 (*Ohio Edison Case*). OCC argues that AEP Ohio's proposed tariff language does not address a situation where the Commission has approved a charge that is subsequently determined by the Court to be unlawful or unreasonable. OCC contends that AEP Ohio's proposed language is vague and ambiguous and focuses on "reconciliation," which, according to OCC, typically pertains to a financial review and, thus, limits the type of review that may give rise to a refund in the event that a charge is later found to be unlawful, imprudent, or unreasonable. In order to protect consumers, OCC recommends that the PPA Rider tariffs state that "[a]ny charge collected from customers under this rider later determined to be unlawful, imprudent, or unreasonable by the [Commission] or Supreme Court of Ohio is refundable to customers."

{¶ 9} On March 23, 2018, AEP Ohio filed comments in response to OCC. Initially, AEP Ohio notes that the Company's proposed tariff language was developed in cooperation with Staff, in order to fully address the issue in the *Ohio Edison Case*, and has been approved by the Commission in other cases, despite OCC's objections. *In re Ohio Power Co.*, Case No. 17-1156-EL-RDR, Finding and Order (Feb. 28, 2018) at ¶¶ 11-12; *In re Ohio Power Co.*, Case No. 14-1696-EL-RDR, Finding and Order (Feb. 21, 2018) at ¶¶ 11-12. AEP Ohio also asserts

that OCC's proposed tariff language is an untimely and unlawful attempt to circumvent the controlling process for OCC's pending appeal regarding the PPA Rider. AEP Ohio notes that the Commission has already denied OCC's request that the PPA Rider be collected subject to refund. *PPA Rider Case, Second Entry on Rehearing* (Nov. 3, 2016) at ¶ 201, *Fifth Entry on Rehearing* (Apr. 5, 2017) at ¶¶ 72-74. According to AEP Ohio, it would be inappropriate to consider OCC's request to modify the Commission's final decision on the merits, with a challenge pending before the Ohio Supreme Court. AEP Ohio adds that OCC seeks to bypass the established requirements under R.C. 4903.16 for staying a final order of the Commission. For these reasons, AEP Ohio requests that its proposed tariff language be approved.

{¶ 10} On March 27, 2018, OCC filed a reply to AEP Ohio's comments. OCC asserts that, although AEP Ohio's proposed tariff language may have been coordinated with Staff, the Commission can benefit from input from all stakeholders, including OCC. Further, according to OCC, AEP Ohio concedes that its tariff language does not address a situation where a Commission-approved charge is determined to be unlawful, imprudent, or unreasonable by the Ohio Supreme Court. OCC contends that such charges should be refunded to customers. OCC also claims that its objections to AEP Ohio's proposed tariff language have been raised in response to the *Ohio Edison Case* and are, therefore, not an attempt to circumvent the appellate process or the requirements of R.C. 4903.16. OCC states that its position is merely that AEP Ohio's proposed tariffs do not sufficiently protect consumers.

{¶ 11} The Commission finds that AEP Ohio's proposed PPA Rider tariffs, as filed on February 28, 2018, are reasonable, consistent with the *ESP 3 Case* and the *PPA Rider Case*, and in the public interest. The Commission has previously directed that the PPA Rider be audited on an annual basis for accounting accuracy and prudence, with the rider subject to reconciliation as a result of the annual audits. *PPA Rider Case, Opinion and Order* (Mar. 31,

2016) at 89-90. AEP Ohio's proposed tariffs are consistent with the Commission's prior directives and make clear that the PPA Rider is subject to reconciliation and adjustment. In response to OCC's position, we note that AEP Ohio's revised tariffs explicitly clarify that the PPA Rider is subject to reconciliation, including, but not limited to, refunds to customers, based upon the results of Commission-ordered audits. As noted above, the stipulation adopted by the Commission in the *PPA Rider Case* requires annual prudency reviews. *PPA Rider Case* at 89-90. In that respect, OCC's concerns are already addressed by AEP Ohio's proposed tariffs. To the extent that OCC recommends tariff language addressing customer refunds based on decisions of the Ohio Supreme Court, OCC's proposal exceeds the scope of the *Ohio Edison Case*. We, therefore, find that AEP Ohio's PPA Rider tariffs should be approved. We further find that no hearing is necessary in these proceedings.

III. ORDER

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That AEP Ohio's proposed PPA Rider tariffs, as filed on February 28, 2018, be approved. It is, further,

{¶ 14} ORDERED, That AEP Ohio be authorized to file tariffs, in final form, consistent with this Finding and Order. AEP Ohio shall file one copy in these case dockets and one copy in its TRF docket. It is, further,

{¶ 15} ORDERED, That the effective date of the new tariffs shall be a date not earlier than the date upon which the final tariff pages are filed with the Commission. It is, further,

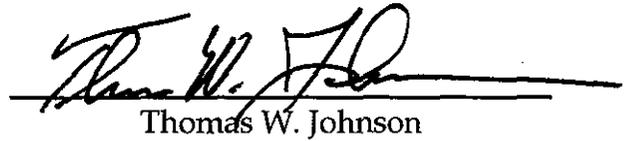
{¶ 16} ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 17} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Asim Z. Haque, Chairman

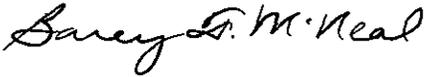

M. Beth Trombold
Thomas W. Johnson

Lawrence K. Friedeman

Daniel R. Conway

SJP/sc

Entered in the Journal **APR 04 2018**



Barcy F. McNeal
Secretary